

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of)	
)	No. 62274-9-I
LORI LIEPPMAN,)	
)	DIVISION ONE
Petitioner,)	
)	UNPUBLISHED OPINION
and)	
)	
GARY D. FLANZER,)	
)	
<u>Respondent.</u>)	
)	
JOEL MILSTEIN, Judgment Creditor by)	
order dated 1/16/98,)	
)	
Respondent,)	
)	
v.)	
)	
GARY D. FLANZER and MARILYN)	
GUNTHER,)	
)	FILED: July 20, 2009
Appellants.)	

Grosse, J. — An appellant who fails to provide an adequate record for review is not entitled to relief on appeal. Gary Flanzer appeals from the trial court's order denying his motion to vacate a 10-year extension of Joel Milstein's judgment against Flanzer. Flanzer and his attorney, Marilyn Gunther, appeal from the imposition of sanctions and the resulting judgment against them for attorney fees. They also challenge the trial court's limitation upon their further litigation of issues previously resolved and reservation of the right to adjust the award of fees upward for any additional unsuccessful motions, challenges or appeals. But Flanzer and Gunther have not provided clerk's papers or any report of proceedings.

The appellant has the burden of complying with the rules and presenting a record adequate for review on appeal.¹ Failure to provide an adequate record precludes appellate review.² Appellants did file a designation of clerk's papers, but the trial court clerk is only required to transmit the clerk's papers upon payment of the fee for the preparation of the documents.³ None of the of the clerk's papers designated by the appellants have been transmitted to this court. Efforts by the clerk's office to leave phone messages for Gunther regarding the absence of clerk's papers have been unsuccessful.⁴ In their statement of arrangements, the appellants explain that the oral argument before the trial court was not reported or recorded so they are unable to generate a verbatim report of proceedings.⁵

In the absence of some record setting out the precise arguments offered by the appellants in the motion to vacate the 10-year extension of the Milstein judgment, it is not possible to analyze the appellants' challenge to the denial of the motion to vacate. The appellants' challenge of the award of CR 11 sanctions, the amount of fees awarded, and the sufficiency of the evidence supporting the findings of fact entered by the trial court on the fee award cannot be resolved without a record of the precise

¹ In re Marriage of Haugh, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990).

² Olmsted v. Mulder, 72 Wn. App. 169, 182-83, 863 P.2d 1355 (1993) (given appellant's failure to designate relevant portions of the record, court refused to review challenge to trial court's refusal to offset judgment).

³ RAP 9.7(a) and 9.8(a).

⁴ The respondent has designated supplemental clerk's papers and those documents have been transmitted to this court, but the supplemental clerk's papers do not include the materials necessary to review the appellants' arguments.

⁵ Appellants apparently have not attempted the option of a narrative or agreed report of proceedings. RAP 9.3 and 9.4.

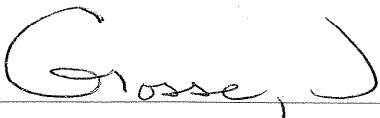
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arguments raised and facts presented in the trial court regarding sanctions and fees. As to the trial court's imposition of limits on further litigation and option to make upward adjustments in the fee award, the record on appeal does not even include those orders as part of the clerk's papers.⁶

Finally, the appellants' amended notice of appeal lists the trial court ruling on supersedeas, but the appellants fail to assign error to the ruling on supersedeas or cite any legal authority regarding supersedeas.⁷ Neither have the appellants invoked the RAP 8.1(h) option of filing a motion in this court objecting to a ruling on supersedeas. Therefore, any question regarding the trial court's supersedeas order is not properly before us.

Respondent requests reasonable attorney fees for a frivolous appeal arguing the appellants raise no debatable issue and their appeal is so devoid of merit that there is no reasonable possibility of reversal.⁸ For lack of an adequate record, this appeal is frivolous and upon compliance with RAP 18.1, respondent is awarded his reasonable attorney fees on appeal.

Affirmed.


A handwritten signature in cursive script, appearing to read "Grosse", is written over a horizontal line.

WE CONCUR:

⁶ The appellants have attached copies of the September 2 and 24, 2008 orders as appendices to their brief, but that is not a substitute for providing clerk's papers assembled by the trial court clerk. RAP 10.3(a)(8).

⁷ RAP 10.3(a).

⁸ Andrus v. Dep't of Transp., 128 Wn. App. 895, 900-01, 117 P.3d 1152 (2005).

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Jan, J.

Elington, J.